## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ABINGDON DIVISION

UNITED STATES OF AMERICA	)
	) Case No. 1:03CR00093
v.	) OPINION AND ORDER
ROBERT LEE SMITH,	) By: James P. Jones
Defendant.	<ul><li>Chief United States District Judge</li></ul>

Robert Lee Smith, Pro Se.

The defendant was sentenced in this court on June 30, 2004, to 24 months imprisonment. He has filed a "Motion to Correct Clerical Error Pursuant to Fed. R. Crim. P. 36," in which he seeks an order reducing his sentence to reflect time served in custody prior to sentencing. He previously filed a "Motion for a Nunc Pro Tunc Amended Judgment" involving the same issue, which motion was denied on October 18, 2006.

In his present motion, Smith claims that "Chief Judge Jones specifically expressed at my sentencing hearing that I was to be credited for time served in the custody of the U.S. Marshall's [sic] Service from October 17, 2003 to July 8, 2004, a total of 265 days." In fact, the court reporter's notes show that the following occurred at the sentencing:

MR. DICKERT: Your Honor, just so you know, he has been in

federal custody since October. Will he get

credit for that on his 24 month sentence?

THE COURT: The Bureau of Prisons administratively

applies credit. That's up to the Bureau of Prisons by statute, and he will receive all such

credit to which he is entitled under the statute.

Thank you. You may be seated.

Thus, as stated by the court at the time, whether Smith receives credit for this

jail time is up to the Bureau of Prisons and does not involve a clerical mistake by the

court. As Smith suggests in his motion, the likely reason he has not received credit

administratively is because his jail time was applied to another sentence. See 18

U.S.C.A. § 3585(b) (West 2000). In any event, the court has no jurisdiction to reduce

Smith's sentence under Rule 36.

For these reasons, it is **ORDERED** that the Motion to Correct Clerical Error is

DENIED.

ENTER: May 9, 2007

/s/ JAMES P. JONES

Chief United States District Judge

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